

JAMES L. HARDEN
CARL A. NILSEN

IBLA 72-57

Decided March 29, 1974

Appeal from a decision of the BLM New Mexico State Office revising the description of certain lots included in oil and gas lease NM 3626 (Okla).

Reversed and remanded.

Boundaries--Public Lands: Riparian Rights--Oil and Gas Leases:
Surveys of Public Land: Generally

Where a surveyed lot of public land riparian to a nonnavigable body of water is leased for oil and gas according to the plat of survey, the area covered by the original lot remains in the lease, even though part of the lot is thereafter covered by water, so long as the United States retains title to the river bed.

Oil and Gas Leases: Description--Oil and Gas Gases: Land Subject to

Where an oil and gas lease is issued describing the lands it covers by metes and bounds but excepting and excluding lands in surveyed lots, the land in the lots are not part of the leased lands even though they are in part encompassed within the metes and bounds description.

APPEARANCES: James L. Harden, pro se; Carl A. Nilsen, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

James L. Harden has appealed from a decision dated July 21, 1971, of the BLM New Mexico State Office which revised the metes and bounds descriptions of several lots of public land covered

by noncompetitive oil and gas lease NM 3626 (Okla). The revision reduced the acreage in the lease from 93.21 acres to 41.67 acres. The decision also found that the acres eliminated from Harden's lease had been leased to Carl A. Nilsen by lease NM 0283327 (Okla) and were properly part of that lease.

The area in conflict is now part of the bed of the Canadian River in lot 7 sec. 4. and lots 2 and 6 sec. 14, T. 11 N., R. 9W., I.M., Oklahoma. As originally surveyed in 1873, these lots were riparian to the left bank of the river and each had as a boundary the meander line of the river bank. Over the years the river bank has moved northeasterly eroding much of the formerly fast land. 1/

For our purposes the leasing history of these lots begins in 1953. Noncompetitive oil and gas lease BLM 032217 (Okla) effective January 1, 1953, covered, among other lands, lot 7 sec. 4 and lots 2 and 6 sec. 14, supra. After several extensions pursuant to provisions of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. sec. 181 et seq., it expired on November 30, 1964.

The next application was filed in 1962. By then as we have seen, the position of the river bank bed had changed materially from the time of the original survey. On May 14, 1962, Carl A. Nilsen filed noncompetitive offer NM 0283327 for, among others, lands riparian to lots 7, 2 and 6, supra. He described the lands applied for designated as Tracts 1, 2 and 3, respectively, as unsurveyed land lying in the bed of the Canadian River and riparian to one of the above lots. Effective June 1, 1963, the lease issued for:

3 unsurveyed tracts in the bed of the Canadian River described as Tracts 1, 2, 3 in Exhibit "A" attached hereto, EXCEPTING AND EXCLUDING any conflicts with surveyed Lot 7, Sec. 4, Lots 1, 2, 6, Sec. 14.

Each tract described by metes and bounds, land in the bed of the river which was bounded on the landward side by the bank of the river as it appeared in a 1957 aerial photograph and on the opposite side by the medial line of the river as determined by the same photograph. The gross area covered by the metes and bounds descriptions included substantial area of what had

1/ Lot 7 which originally contained 30.87 acres contained 4.75 acres of fast land; lot 2 has diminished from 39.29 to 2.57 acres; and lot 6 from 31.00 to 14.57 acres, all as of 1957.

originally been fast land in lots 7, 2 and 6, supra. The acreage and rentals were based on the gross acreage.

The next lease, which Harden holds, was issued in 1967. On August 16, 1965, the New Mexico State Office requested the Engineering Division, BLM, for a description of what remained of the lots 7, 2 and 6, supra, including the submerged portions to the medial line of the river.

On August 30, 1967, the Division of Engineering, BLM, submitted metes and bounds descriptions of lots 7, 2 and 6, supra, based upon the same aerial photograph as had been used for Nilsen's lease. Each lot was described as covering what was left of the original fast land plus submerged land to the 1957 medial line of the river. Lot 7 was computed to have 25.16 acres; lot 2, 29.38; and lot 6, 18.89.

The tracts were then posted in September 1967, as Parcel 140 for filing in accordance with the simultaneous filing procedures of the oil and gas regulations. Effective November 1, 1967, lease NM 3626 (Okla) was issued to Norman Sterling, who assigned it to Harden effective June 1, 1969.

About a year later the New Mexico State Office became concerned with the possibility of a conflict between the Nilsen and Harden leases. On July 21, 1971, it issued its decision correcting the description in NM 3626 (Okla) by removing from it all land in conflict with NM 0283327 (Okla). It accomplished this by leaving in NM 3626 only what remained as fast land as of 1957 in lots 7, 2, and 6. It found:

* * * the metes and bounds description contained in Parcel 140, and for which lease NM 3626 (Okla) issued, does not describe the remaining portions of Lot 7 Sec. 4 and Lots 2 and 6 Sec. 14, but instead describes lands riparian to these lots, which are embraced in oil and gas lease NM 0283327 (Okla), which was issued effective June 1, 1963.

On appeal Harden contends that the State Office decision is in error. He asserts that Nilsen's lease, NM 0283327, covered only the stream bed and was subject to the legal description of lease NM 3626. The decision, he continues, is contrary to recent decisions of the BLM, and citing in particular In re Viersen.

Harden's objections are well taken. ^{2/} The controlling principles are fully discussed in Sam K. Viersen, Jr., 72 I.D. 251 (1965), Thomas D. Chace, 72 I.D. 266 (1965), and Emily K. Connell, 70 I.D. 159 (1963). Viersen and Connell also considered problems arising along the Canadian River in Oklahoma. Connell held that the Department would presume that the Canadian River is nonnavigable. 72 I.D. at 160, 161. Viersen also treated the river as nonnavigable. Since neither Nilsen nor Harden contend otherwise, we too will treat the Canadian River as nonnavigable. It follows then that the United States as the owner of lots riparian to a nonnavigable river owns the bed of the river to its medial line. Hardin v. Shedd, 190 U.S. 508, 519 (1903); Viersen, *supra*, at 262; Connell, *supra* at 160; State of Utah, 70 I.D. 27, 37, 38 (1963).

After an extended discussion, Viersen set forth several principles pertinent to this appeal. It held (1) that an oil and gas lessee of a lot riparian to a nonnavigable river (or other body of water) does not acquire any rights to the federally-owned river bed lands, (2) that a lease of a surveyed upland lot does not carry with it lands which have accreted to it, and (3) that a lease of an upland lot is not diminished by erosion or reliction. It concluded:

So long as the title to the mineral deposits is in the United States, an oil and gas lease of a lot carries with it the acreage shown on the plat of survey whether the river has moved into it or away from it. Viersen, *supra* at 264.

^{2/} To help visualize the problem raised by this appeal, it may be useful to present it in a simplified form. Assume that there are 3 blocks of land, A, B, C, running from east to west. A and B together constitute a lot as originally surveyed, with the west bank of B being the original meander line of a river. Over the years the river has moved eastward so that only A remains fast land, its western boundary now being the present meander line of the river. B is now part of the river bed. C is the river bed between the original meander line and the medial line of the river as it existed as of the original survey. It too is submerged land.

The first lease covered A and B; while that was outstanding a second lease was issued covering by a metes and bounds description lots C and B, but excluding and excepting conflicts with surveyed lots A and B. Upon the expiration of the first lease, a third lease was issued covering again by metes and bounds description lots A and B. The issue is whether lot B is within the second or third lease.

In Chace, supra, which was decided the same day as Viersen, the Department, applying the rules set out in Viersen, held that an oil and gas lease for a surveyed lot of public land riparian to a nonnavigable body of water continues to embrace the original area even though a portion of it is now part of the river bed and that an oil and gas lease offer for such land which is in an outstanding lease must be rejected.

Turning now to the facts in this appeal, we note Nilsen's offer NM 0283227, described four tracts each listed in the following style: "Tract 1 Rip. to Lot 7, Sec. 4 26.12 acres." At the time he filed his offer, and as of the effective date of his lease, the Connell lease NM 032217 was still outstanding. Therefore the land in surveyed lots 7, 2, and 6, whether fast land or river bed was not available for leasing and his offer should have been rejected to that extent. Chace, supra. Instead of rejecting the offer in part, the lease as issued covered all the land Nilsen had applied for but excepted and excluded from it any conflicts with lots 7, 2, and 6. By excepting and excluding those lands, the lease had the same effect as though the metes and bounds descriptions had been amended to exclude all land still held by the U. S. lying landward of the original meander lines, whether river bed or fast land. The lands in the lots as shown on the original survey were therefore never part of Nilsen's lease.

There are several documents in the case records which demonstrate that Nilsen's lease covered no land in lots shown on the original survey. An oil and gas plat dated May 24, 1962, a week prior to the effective date of his lease, has marked on it the several tracts which make up the lease.

Each of these tracts is shown only as abutting the original surveyed lots and as lying in the bed of the river as depicted on the original survey. Lots 7, 2 and 6 are shown as being in an outstanding oil and gas lease.

Further, after the Connell lease had expired, the Chief Branch of Minerals Adjudication, BLM, requested the Chief, Engineering Division, BLM, to furnish descriptions for lands in the expired lease. The memo read:

Will you please furnish description of what remains of the following lots including the submerged portions to the medial line of the river, T. 11 N., R. 9 W., Canadian County:

Sec. 4: Lot 7

Sec. 14: Lot 2

Lot 6 plus the small portion of Lot 5 in bed of river now included as riparian rights of Lot 6.

Attached are two aerial photographs submitted with NM 0283327. This lease excludes the areas described above.

Here again we see that the land formerly in the Connell lease was assumed to have been excluded from the Nilsen lease. For the reasons stated above we, too, have come to this conclusion. Therefore the State Office decision is in error insofar as it sought to correct the description in the Harden lease and limit it to the fast land still remaining in lot 7 sec. 4, and lots 2 and 6 sec. 14 as of 1957. Upon the termination of the Connell lease all the land formerly in the surveyed lots title to which was still in the U. S. again became available for leasing. The description of these lots as offered as Parcel 140 bounded the lots on the medial line of the river as of 1957 or the 1873 meanders of the left bank. It appears that the metes and bounds descriptions of these tracts places them all within the boundaries of lots 7, 2 and 6 of the original survey. Accordingly, they were properly offered for lease and then leased in accordance with the simultaneous filing procedure.

As a result the Harden lease covers all of the lands it describes which lie within the area covered by the lots of the original survey. The Nilsen lease covers all the lands it describes which lie between the meander line of the original survey and the medial line of the river as described for each of the tracts in his lease. 3/

3/ Letters and memoranda in the case records indicate that the river has continued its movement northeasterly. They indicate that the federal acreage left in lot 7 sec. 4 may now be only slightly over 12 acres. However, Nilsen contends that the changes occurring since 1957 have been caused by avulsion so that the ownership of the river bed has not changed since then. We express no views on these problems.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is reversed.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge

